



**Ninety-Eighth Legislature - First Session - 2003**  
**Committee Statement**  
**LB 217**

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**Hearing Date:** January 27, 2003

**Committee On:** Banking, Commerce and Insurance

**Introducer(s):** (Banking, Commerce and Insurance Committee)

**Title:** Change provisions relating to banking and finance

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**Roll Call Vote – Final Committee Action:**

- X   Advanced to General File
  - Advanced to General File with Amendments
  - Indefinitely Postponed
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**Vote Results:**

- 8   Yes                               Senators Quandahl, Tyson, Foley, Jensen, Johnson, Loudon,  
  Mines, Redfield
  - No
  - Present, not voting
  - Absent
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**Proponents:**

Senator Mark Quandahl  
Sam Baird  
Bob Hallstrom  
Scott Sullivan  
Larry Ruth

**Representing:**

Introducer  
NE Department of Banking and Finance  
NE Bankers Association  
NE Credit Union League  
Heartland Community Bankers Association

**Opponents:**

**Representing:**

**Neutral:**

**Representing:**

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**Summary of purpose and/or changes:**

LB 217 (Banking, Commerce and Insurance Committee), introduced at the request of the Department of Banking and Finance, would amend various sections within the banking and finance statutes. The bill would provide, section by section, as follows:

**BANKS**

Section 1. Amends Neb. Rev. Stat. § 8-101, which is the definitional statute for the Nebraska Banking Act. Subdivision (12) would be amended to expand the definition of

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“financial institution” to include institutions chartered by the federal government and other states, and to further include similar institutions which carry federal deposit insurance.

Section 2. Amends Neb. Rev. Stat. § 8-115.01. This section sets forth the procedures for chartering a new bank and for moving a bank charter outside its headquarter city. This section currently requires the Department of Banking and Finance (“Department”) to publish a notice of the application and send notice by certified mail to all financial institutions in the county where the bank would be located. The amendment shifts the cost of the certified mail notice from the Department to the applying institution.

Section 3. Amends Neb. Rev. Stat. § 8-132 to remove references to Neb. Rev. Stat. § 8-131, which is being repealed as obsolete (See Section 50), and to make corresponding language changes relating to reserves and funds of state banks.

Section 4. Amends Neb. Rev. Stat. § 8-133 to remove the requirement that the Department set maximum rates of interest for state banks, and to provide the standards a bank must consider in setting such rates.

Section 5. Amends Neb. Rev. Stat. § 8-148 to remove a reference to an obsolete date and to authorize the Department to approve certain state bank investments by order, in addition to the current approval process of rule and regulation.

Section 6. Amends Neb. Rev. Stat. § 8-157, which governs bank branching. One amendment would remove a restriction on the location of moves of branch banks. The restriction was to have been removed in the 2002 legislative session, but did not because of the timing of passage of two different bills on branching. The second amendment concerns the application process for branches. This section currently requires the Department to publish a notice of the application and send notice by certified mail to all financial institutions in the county where the branch would be located. The amendment shifts the cost of the certified mail notice from the Department to the applying institution.

Section 7. Amends Neb. Rev. Stat. § 8-1,118 to remove references to Neb. Rev. Stat. § 8-131, which is being repealed as obsolete (See Section 50).

Section 8. Amends Neb. Rev. Stat. § 8-1,140, which is the “wild-card” statute for state-chartered banks. This section provides parity between state and nationally chartered banks, and is required to be updated on an annual basis to meet state constitutional restrictions.

#### TRUST COMPANIES

Section 9. Amends Neb. Rev. Stat. § 8-208 to provide that a formal resolution of the board of directors of a trust company is not required to approve the conveyance of real estate.

Section 10. Amends Neb. Rev. Stat. § 8-234, relating to the application process for branch trust offices. This section currently requires the Department to publish a notice of the application and send notice by certified mail to all financial institutions in the county where the branch trust office would be located. The amendment shifts the cost of the certified mail notice from the Department to the applying institution.

## BUILDING AND LOAN ASSOCIATIONS

Section 11. Amends Neb. Rev. Stat. § 8-355, which is the “wild-card” statute for state-chartered savings and loan associations. This section provides parity between state and federally chartered savings and loan associations, and is required to be updated on an annual basis to meet state constitutional restrictions.

Section 12. Amends Neb. Rev. Stat. § 8-373 to provide that the adoption of rules and regulations relating to applications for capital stock savings associations is not mandatory to the Department.

Section 13. Amends Neb. Rev. Stat. § 8-378 to provide that the adoption of rules and regulations relating to applications for conversions of mutual savings associations to capital stock savings associations is not mandatory to the Department.

## ASSESSMENTS

Section 14. Amends Neb. Rev. Stat. § 8-602, which is the principal fee-setting statute of the Department. New subdivisions (20) is proposed to establish a \$250 fee for credit union branch applications. Language cleanup is proposed in subdivisions (1), (2), and (11).

## STATE-FEDERAL COOPERATION

Section 15. Amends Neb. Rev. Stat. § 8-701 to remove a duplicative term in the definition of “banking institution” for Chapter 8, article 7.

## PERSONAL LOANS

Section 16. Amends Neb. Rev. Stat. § 8-815, which relates to the making of personal loans by banks, to remove obsolete references to Neb. Rev. Stat. § 45-1003.

## BANK HOLDING COMPANIES

Section 17. Amends Neb. Rev. Stat. § 8-916 of the Nebraska Bank Holding Company Act of 1995. The section currently allows state banks to act as an agent for affiliated depository institutions for a number of customer banking transactions, including the receipt of deposits, the closing of loans, and acceptance of loan payments. The amendment would authorize agency transactions between unaffiliated depository institutions.

## SALE OF CHECKS AND FUNDS TRANSMISSION

Section 18. Amends Neb. Rev. Stat. § 8-1001, which is the definitional section for the Nebraska Sale of Checks and Funds Transmission Act. Subdivision (6) is added to provide a definition of “financial institution.” The definition is a cross-reference to Section 8-101. (See Section 1.)

Section 19. Amends Neb. Rev. Stat. § 8-1015 to bring Section 21 of the bill into the Nebraska Sale of Checks and Funds Transmission Act, and to renumber this section.

Section 20. Amends Neb. Rev. Stat. § 8-1003 to replace a laundry list of financial institutions with the term “financial institution.” This section provides exemptions from the licensing requirements of the Nebraska Sale of Checks and Funds Transmission Act.

Section 21. Adds a new section to the Nebraska Sale of Checks and Funds Transmission Act to authorize the Department to do the following: conduct examinations of licensees under the Act; assess the cost of those examinations to the licensees; contract with other regulatory agencies to conduct examinations of out-of-state licensees; and enter into cooperative sharing agreements and conduct joint examinations or joint enforcement actions with other regulators.

Section 22. Amends Neb. Rev. Stat. § 8-1013 to remove the ten-day requirement for the Director of the Department to issue a written decision following a hearing to deny an application for a Sale of Checks and Funds Transmission License or to revoke an existing license.

## SECURITIES

Section 23. Amends Neb. Rev. Stat. § 8-1103 to add a new subdivision (9)(b) authorizing the Department to bar any person from engaging in the securities business in Nebraska. The standards for a bar consist of willful violations of the Securities Act of Nebraska, rules, regulations, or orders adopted under the Act, or engaging in dishonest or unethical practices in the securities business. This authorization is an extension of the Department's authority to bar persons who are currently licensed under the Act.

Section 24. Amends Neb. Rev. Stat. § 8-1120, within subsection (7), to remove the rule-making requirement for the release of information filed under the Securities Act of Nebraska.

Section 25. Amends Neb. Rev. Stat. § 8-1503. The section sets the procedures for the denial of a proposed change of control for banks and other financial institutions. The amendment removes a mandatory requirement for administrative rules of procedure.

Section 26. Amends Neb. Rev. Stat. § 8-1507 to provide that the adoption of rules and regulations relating to cross-industry acquisitions of financial institutions is not mandatory to the Department.

Section 27. Amends Neb. Rev. Stat. § 8-1510. The section sets the application procedure for cross-industry acquisitions, and currently requires a public hearing. The amendment will authorize an expedited procedure that will require a hearing only if the condition of the acquiring financial institution warrants a hearing or there is a substantive objection after notice. The amendment also provides that the applicant will pay all costs of published notices and a certified mail notices sent to institutions in all counties where the acquired financial institution has offices. Currently, the Department pays the certified mail costs.

## BANKER'S BANKS

Section 28. Amends Neb. Rev. Stat. § 8-1603 to provide that the adoption of rules and regulations relating to banker's banks is not mandatory to the Department.

## COMMODITY CODE

Section 29. Amends Neb. Rev. Stat. § 8-1731 to provide that listed areas of cooperation between the Department and other regulatory agencies relating to the Nebraska Commodity Code are permissive and not mandatory. The areas include the adoption of rules and proposed statutory changes.

## CREDIT UNIONS

Section 30. Amends Neb. Rev. Stat. § 21-1725.01, which governs applications for new credit unions and branches of credit unions. This section requires the Department to publish a notice of the application and send notice by certified mail to all financial institutions in the county where the new credit union or the branch would be located. The amendment shifts the cost of the certified mail notice from the Department to the applicant credit union.

Section 31. Amends Neb. Rev. Stat. § 21-17,102, relating to investment of credit union funds. The amendment would authorize the Department to approve additional credit union investments by order, in addition to the current approval process of rule and regulation.

Section 32. Amends Neb. Rev. Stat. § 21-17,115, which is the “wild-card” statute for state-chartered credit unions. This section provides parity between state and federally chartered credit unions, and is required to be updated on an annual basis to meet state constitutional restrictions.

## LOAN BROKERS

Section 33. Amends Neb. Rev. Stat. § 45-191.02. This amendment to the Loan Broker Act would do the following: require annual renewal of filings by loan brokers; assess a \$100 renewal filing fee; increase the fee for filing an amendment from \$25 to \$50; change the fund where fees are deposited from the Securities Act Cash Fund to the Financial Institutions Assessment Cash Fund; and remove the rule-making requirement for the release of information filed under this Act.

## INSTALLMENT SALES

Section 34. Amends Neb. Rev. Stat. § 45-335, which is the definitional section for the Nebraska Installment Sales Act. Subdivision (11) would be amended to provide that a “sales finance company” is a person who purchases one or more installment contracts, thus clarifying that there is no de minimis exemption under the Act, and to remove the laundry list of financial institutions and replace it with the term “financial institution,” which is defined by a cross-reference to Section 8-101 of the Nebraska Banking Act.

Section 35. Amends Neb. Rev. Stat. § 45-343, relating to misdemeanor violations of the Nebraska Installment Sales Act, to coordinate with the proposed definitional changes in Section 34, and to update references to the Act.

Section 36. Amends Neb. Rev. Stat. § 45-345, relating to the licensing requirements of the Nebraska Installment Sales Act, to coordinate with the proposed definitional changes in Section 34, and to codify a long-standing interpretation of the Act that sellers of goods and services who comply with all provisions of the Act may take advantage of a time-price differential greater than 16% if they do not otherwise act as a sales finance company.

## DELAYED DEPOSIT SERVICES

Section 37. Amends Neb. Rev. Stat. § 45-902, which is the definitional section for the Delayed Deposit Services Licensing Act. New subdivision (4) adds a definition for “financial institution,” which is defined by a cross-reference to Section 8-101 of the Nebraska Banking Act.

## INSTALLMENT LOANS

Section 38. Amends Neb. Rev. Stat. § 45-1002, which is the definitional section for the Installment Loan Act. The amendments remove the laundry list of financial institutions and replace it with the term “financial institution,” which is defined by a cross-reference to Section 8-101 of the Nebraska Banking Act.

Section 39. Amends Neb. Rev. Stat. § 45-1003 to replace a laundry list of financial institutions with the term “financial institution.” This section lists entities ineligible for an installment loan license.

Section 40. Amends Neb. Rev. Stat. § 45-1018 relating to reports to be filed by installment loan licensees with the Department. The amendments update the section by removing a required report of liabilities and allowing the Department to prescribe the manner of filing. The latter will allow electronic filing.

## SELLER-ASSISTED MARKETING

Section 41. Amends Neb. Rev. Stat. § 59-1701.01 to bring new Section 44 of the bill into the Seller-Assisted Marketing Plan Act.

Section 42. Amends Neb. Rev. Stat. § 59-1703, which is the definition of a “seller-assisted marketing plan,” to remove the exclusion for plans in which the total initial payment does not exceed \$500. The exclusion is redrafted as an exemption in Section 44 to allow the Department greater enforcement flexibility.

Section 43. Amends Neb. Rev. Stat. § 59-1749 to clarify that the section refers only to sellers under the Seller-Assisted Marketing Plan Act.

Section 44. Adds a new section to the Seller-Assisted Marketing Plan Act to provide an exemption from the Act for plans in which the total initial payment does not exceed \$500. As a result of Sections 42 and 44, the Department will not have to prove the dollar amount of an advertised or solicited plan prior to taking administrative action against a person who does not comply with the filing and disclosure requirements of the Act.

Section 45. Amends Neb. Rev. Stat. § 59-1758.01 to clarify that the burden of proof rests with the person claiming an exemption or exclusion from any provision of the Seller-Assisted Marketing Act, not just from the definitions contained in the Act.

## REAL ESTATE CLOSING AGENTS

Section 46. Amends Neb. Rev. Stat. § 76-2,123 to provide that the adoption of rules and regulations relating to relating to real estate closing agents is not mandatory to the Department or other state agencies.

## MISCELLANEOUS PROVISIONS

Section 47. This section provides for an operative date of three calendar months after session adjournment for sections 1 to 7, 9, 10, 12 to 31, 36 to 46, 49 and 50 of the bill.

Section 48. This section repeals the amendatory sections that are subject to the emergency clause.

Section 49. This section repeals the amendatory sections that are not subject to the emergency clause.

Section 50. This section outright repeals Neb. Rev. Stat. § 8-131, relating to required reserves for state banks, which is obsolete for the reason that there are adequate federal requirements. This section also outright repeals Neb. Rev. Stat. § 8-1103.01, which was passed by the 2002 Legislature and required a one-time refund of specific investment adviser fees. The Department has made the required refunds.

Section 51. This section provides for the emergency clause for the “wild-card” statutes (Sections 8, 11, and 32).

**Explanation of amendments, if any:**

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**Senator Mark Quandahl, Chairperson**